

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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MARIE ANNE THOMAS, et al.,

Plaintiffs,

MEMORANDUM AND ORDER

-against-

09-CV-5167 (SLT)

**NEW YORK CITY DEPARTMENT OF
EDUCATION, et al.,**

Defendants.

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ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

This Court is in receipt of a letter dated February 17, 2010, from plaintiffs' counsel ("Pl. Letter"), addressed to Judge Townes and the undersigned magistrate judge. Plaintiffs' letter responds to two letters dated February 12, 2010, from defense counsel: one requesting that Judge Townes schedule a premotion conference in connection with defendants' anticipated motion to dismiss the complaint; and the other requesting that this Court adjourn *sine die* the initial conference previously scheduled for February 22, 2010. Plaintiffs oppose both defense applications and ask that the Courts deny "the defendants' request to further delay the important issues raised in this lawsuit from being promptly litigated." Pl. Letter at 1.

As an initial matter, this Court rejects plaintiffs' contention that "[d]efendants are now in default of the Court's Order" granting them until February 16, 2010, to respond to the complaint. See id. Judge Townes' Individual Rules expressly provide that "[s]ervice of the letter [requesting a premotion conference] by the moving party within the time requirements of FRCP 12 shall constitute timely service of a motion made pursuant to FRCP 12(b)." Rule IIIB, Individual Motion Practices, Judge Sandra L. Townes. Defense counsel's application to

Judge Townes for a premotion conference was filed on February 12, 2010, four days prior to the February 16th deadline for responding to the complaint. Defendants therefore are not in default of the Court's Order.

Notwithstanding the pending request for a premotion conference before Judge Townes, this Court is prepared to go forward with an initial conference, but believes that the more prudent course is to hold the initial conference after the premotion conference, which has not yet been scheduled. Therefore, defendants' request to adjourn the initial conference *sine die* is granted in part and denied in part. The February 22nd initial conference is adjourned to April 15, 2010, at noon.

SO ORDERED.

**Dated: Brooklyn, New York
February 19, 2010**

**ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE**